Nos. 82-1248, 82-1278

Office-Supreme Court, U.S.
FILED
OCT 13 1983
ALEXANDER L. STEVAS,
CLERK

In The

Supreme Court of the United States

October Term, 1983

ELLEN SCHALL, as Commissioner of the New York City Department of Juvenile Justice,

Appellant,

-and-

ROBERT ABRAMS, as Attorney General of the State of New York,

Intervenor-Appellant,

-against-

GREGORY MARTIN, LUIS ROSARIO, KENNETH MORGAN, and all others similarly situated,

Appellees.

On Appeal from the United States Court of Appeals for the Second Circuit

BRIEF FOR AMICUS CURIAE IN SUPPORT OF APPELLEES

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MA (617) 542-1114 • DC (202) 783-7288 • USA (800) 221-0008

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INTEREST OF AMICUS CURIAE

The Association for Children of New Jersey is a private non-profit corporation which advocates on behalf of children. The

Association began in 1847 as the Newark Orphan Asylum which merged in 1960 with the Newark Children's Aid Society to form the Child Service Association. The Child Service Association merged with the Citizen's Committee for Children of New Jersey in 1978 to become the Association for Children of New Jersey.

The Association is directed by a thirty member volunteer Board of Trustees representing individuals from many backgrounds and interests united in their concern for children. The work of the Association is carried out by a small full time staff and many volunteers from its membership. The Association is one of the oldest and largest citizen advocacy groups for children in the country.

The goals of the Association are to be a voice for families and children, to promote policies and programs for the protection and well-being of children, to monitor laws and programs to assure that children's needs are a priority, and to plan for needs of the next generation.

Pursuant to its goals, the Association has conducted two studies of children placed in detention centers for delinquents and shelters for status offenders. The studies raise a number of concerns about children placed in detention. Foremost is the data indicating that a significant number of juveniles are being detained in violation of N.J.S.A. 2A:4-56(b), New Jersey's detention statute for juveniles. New Jersey's detention law is similar to New York Family Court Act §739(a)(i)(ii), and any decision reached by this Court will effect the standard for detention in New Jersey.

As an independent advocacy group, the Association believes that the results of its studies would be of help to the Court in deciding the case.

SUMMARY OF ARGUMENT

Two studies of children in detention and shelters conducted by amicus revealed that a significant number of juveniles were being detained illegally. Furthermore, a large number of juveniles who were detained prior to trial were subsequently released to their parents, foster parents, relatives, or placed in non-secure residential facilities raising the question of whether they should have been detained at all.

Detention statutes for juveniles should be narrowly drawn with clearly defined standards to insure that juveniles are not inappropriately detained. It has been shown that using narrowly drawn standards will result in a significant reduction in the number of children in detention.

ARGUMENT

Detention statutes for juveniles accused of delinquency must be narrowly drawn with clearly defined standards to insure that juveniles are not inappropriately detained.

Amicus submits that the decision of the Second Circuit Court of Appeals should be affirmed. Not only is the opinion well reasoned and sound legally, it is consistent with the findings and recommendations made by amicus in two studies of juveniles in detention and shelter care.

The first of the two studies, J. Brame, L. Wood, *Children in Detention and Shelter Care: Surveying the System in New Jersey* (1979) (hereinafter cited as *Children in Detention*), is an overview and description of children in detention and shelter care, and the system providing that care. The second study, C. Moore, L. Wood, *beneath the labels* (1981) (hereinafter cited as *beneath*

the labels), is a closer look at the children in detention and shelter care and more directly related to the case at bar.[1]

The studies are especially relevant as New Jersey's detention law is similar to New York Family Court Act §739(a)(i)(ii). N.J.S.A. 2A:4-56(b) permits a juvenile to be detained if it is necessary to secure the child's presence at the next hearing and if the nature of the conduct charged is such that the physical safety of the community would be seriously threatened if the juvenile were not detained. While the law deals only with serious threats to the physical safety of the community, the New Jersey Rules of Court allow a juvenile to be detained for property crimes. R. 5:8-6(e)(i)(b).[2]

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1. The overall study consisted of three research areas. The first entailed completion of an extensive questionnaire by each facility giving aggregate statistical information on children in the facilities and information on the facilities themselves. *Id.* at 5.

In the second phase, a random sample of the facility records of 544 juveniles who were either in detention or shelter care in seven counties in 1977 were reviewed. These counties accounted for more than half of the over ten thousand admissions to detention in the state for one year. The number of sampled juveniles in detention was 275. *Id.* at 6.

The third phase involved research on a subsample of 102 children who were at risk of long term placement. *Id.* at 6.

A survey was taken in 1980 of juvenile court intake coordinators concerning the decision making process for detaining juveniles in the seven counties previously mentioned regarding the second phase of the study. *Id.* at 12.

2. On December 31, 1983, a new Code of Juvenile Justice for New Jersey will go into effect. The section on detention N.J.S.A. 2A:4A-34(c), reads:

> c. A juvenile charged with delinquency may not be placed or retained in detention under this act prior to disposition, except as otherwise provided by law, unless:

(Cont'd)

Children in Detention, supra, as an overview of the temporary care system, gave the following generalized description of detention centers in New Jersey:

> Detention facilities in New Jersey as in most parts of the country, are comparatively large facilities and are characterized by locks, bars, and other types of restraining hardware. In a number of instances, they resemble jails. . . . Youngsters in detention are subjected to a rigid, highly regimented regime which offers little privacy and free time. They are permitted few contacts with their family or outside world and are generally

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(Cont'd)

(1) Detention is necessary to secure the presence of the juvenile at the next hearing as evidenced by a demonstrable record of recent willful failure to appear at juvenile court proceedings or to remain where placed by the court or the court intake service or based on information presented to the court on the record that there is a likelihood that the juvenile will not appear at the next court proceeding; or

(2) The physical safety of persons or property of the community would be seriously threatened if the juvenile were not detained and the juvenile is charged with an offense which, if committed by an adult:

(a) Would constitute a crime, or would constitute a repetitive disorderly persons offense, provided that the judge determines that there is a likelihood upon adjudication of delinquency for that disorderly persons offense a custodial disposition would be ordered, or

(b) Would constitute a high misdemeanor as defined by the "New Jersey Controlled Dangerous Substances Act". (P.L. 1970, c. 226; C. 24:21-1 et seq.)

> isolated from the community. Few youths are allowed to attend local schools or participate in community activities. As in most temporary facilities, services are relatively limited although most youngsters are provided with some type of educational and recreational program. Youngsters generally are locked in their rooms for specific periods during the day. *Id.* at 10.

The findings on the utilization of detention facilities reads:

> This report points to the excessive use of detention for youngsters processed in New Jersey's juvenile courts. In 1977, there were 10,468 admissions to locked Detention facilities, which was more than twice the number of admissions to JINS facilities (4,453). The percentage of youths detained among the counties differed greatly and could not be explained by such factors as the youth's behavior. A serious examination should be made to determine whether or not youngsters in some counties are being detained who could safely remain in the community. *Id.* at 87.

The report made the following recommendation concerning detention standards:

> *Efforts should be made to limit the use of locked detention through the development of more precise criteria using the national standards as models.* Youths would thus be detained only if there was a "substantial probability" that they would pose a serious harm to persons in the community or not appear in court. *Id.* at 92.

A juvenile may not be admitted into a detention center in New Jersey without the permission of juvenile court intake. Administrative Office of the Courts, *Operations and Procedures Manual for Juvenile and Domestic Relations Court Intake Services* 8 (1977). The operation of these intake units is therefore crucial in assuring uniformity and the appropriateness of detention prior to trial. In *beneath the labels, supra* at 15, it was found that in the seven counties surveyed, there were striking differences in procedure that were not particularly aimed at following the statutory criteria for detention. Each county had a list of offenses for which a juvenile was automatically detained. While all units automatically detained for homicide and sexual assault, the number of offenses triggering detention varied from a low of three to a high of fourteen. All intake units except one admitted minor offenders to detention. Two units would only allow minor offenders to be detained if they had a record of prior offenses, but the remaining four would detain minor offenders if the juvenile lacked an adult custodian, unavailability of an out-of-home placement, or a desire to keep juveniles charged with delinquency apart from status offenders.[3] *Id.* at 15-16. Placing minor offenders in detention for any other reason then a belief that the child would not appear at the next hearing is violative of N.J.S.A. 2A:4-56(b).

The second report found that more than half of the children in the sample of detained youth were held for reasons other than the statutory criteria according to facility records. Thirteen percent of the juveniles were detained for the lack of an appropriate adult custodian in clear violation of N.J.S.A. 2A:4-56(b). *Id.* at 18. A review of the offenses for which juveniles were held revealed that 34% were held on minor charges, including five who were held illegally for status offenses. *Id.* at 18.

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3. Juveniles charged with minor delinquency offenses may be placed in non-secure shelters if they cannot return home.

The length of stay for detained juveniles was surprisingly long and effectively rebuts the commonly held belief that juveniles only spend brief periods in detention. The average length of stay in the seven detention centers was 14.2 days. The shortest length of stay was 4.8 days while in the state's largest center, the average length of stay was 23.7 days. *Id.* at 22-23. While amicus believes that even one day is too long for a juvenile to be inappropriately held in detention, the facts show that the average stay is not insignificant and the argument that we are only dealing with brief periods of detention is spurious.

The post-adjudicative experience for juveniles in detention is similar to New York's. Sixty percent of the juveniles in the sample were returned to their parents or guardians while another seven percent were placed with relatives or foster parents. Only thirteen percent were committed to the reformatory system. *Id.* at 24. There is no adequate explanation why such a large percentage were no longer dangerous after a finding of guilt but were when the presumption of innocence applied. Judge Winters' hypotheses for this in *Martin v. Strasburg*, 689 F. 2d 365, 368-372 (2nd Cir. 1982), is probably true for New Jersey.

The report recommended that a juvenile should not be in detention unless charged with a crime of the first, second or third degree and constitutes a serious threat to the community or has a demonstrable record of willful failure to appear at the hearings. *Id.* at 82. The recommendation is more restrictive than the new detention law, N.J.S.A. 2A:4A-34(c), which allows juveniles charged with fourth degree crimes and repetitive disorderly persons offenses to be detained.

The Governor's Adult and Juveniles Justice Advisory Committee recognized the need for stricter statutory criteria when it wrote:

> Clearly defined criteria are needed to assist in detention and release decisions while ensuring their appropriateness. Structured, workable guidelines are necessary to reduce inconsistency in the handling of juveniles, the nature of programs, and available services. Governor's Adult and Juvenile Justice Advisory Committee, *Standards and Goals for the New Jersey Criminal Justice System: Final Report* 260 (1977).

Commenting on the present detention law and the wide variation in detention rates from county to county, the Advisory Committee wrote:

> "These criteria are designed to be flexible and thus leave room for discretionary interpretation. The desires of local communities, as reflected in police and judicial discretion, may influence the detention of juveniles, causing detention practices to become an outgrowth of local attitudes and tradition. Disparity in detention rates may be based more upon where the juvenile is taken into custody than the nature of the offenses charged or any other factor. Inconsistencies may also suggest criteria are perhaps overly broad and vague. *Id.* at 216.

A study of detention practices at the Passaic County Detention Center by the Community Research Forum has shown that using the detention standards recommended by the National Institute of Juvenile Justice and Delinquency Prevention,[4] a

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4. Juveniles subject to the jurisdiction of the family court over delinquency should not be detained in a secure facility unless:

(Cont'd)

substantial reduction of detained children would result. Community Research Forum, *Report of the Passaic County Juvenile Justice Committee and New Jersey Department of Corrections* 16 (1979). The report also studied the post release status of 360 children who had been in detention and found that 67% were released to non-secure settings with 59% of them returning to their own homes. *Id.* at 17.

(Cont'd)

a. they are fugitives from another jurisdiction (on a delinquency petition);

b. they request protection in writing in circumstances that present an immediate threat of serious physical injury;

c. they are charged with murder in the first or second degree;

d. they are charged with a serious property crime or a crime of violence other than first or second degree murder which if committed by an adult would be a felony, and;

(i) they are already detained or on conditioned release in connection with another delinquency proceedings;

(ii) they have a demonstrable recent record of willful failure to appear at family court proceedings;

(iii) they have a demonstrable recent record of violent conduct resulting in physical injury to others; or

(iv) they have a demonstrable recent record of adjudications for serious property offenses; and

there is no less restrictive alternative that will reduce the risk of flight, or of serious harm to property or to the physical safety of the juvenile or others. National Institute for Juvenile Justice and Delinquency Prevention, *Report of the Advisory Committee to the Administrator of Standards for the Administration of Juvenile Justice: Standards on Adjudication* 83 (1976).

A study of the Essex County Detention Center, R. Khim, *Report to the Essex County Juvenile Justice Advisory Committee and Department of Corrections: Assessment of Essex County Pre-Trial Detention Needs* (1980) (Community Research Forum), using the standards developed by the National Institute for Juvenile Justice and Delinquency Prevention reached results similar to the Passaic study.[5] The report found that out of 207 detained in January of 1980, 110 did not meet the national standard for detention. Ninety-three percent of these children were eventually released to non-secure settings. *Id.* at 13. Thirty-two of the children who did meet the national standard were also released to non-secure settings. *Id.* at 15. Mr. Khim, in his recommendations, wrote:

> • Secure pretrial detention should be reserved only for those children who pose a significant threat to the public safety or court process. The juvenile court should follow specific and objective national standards detention criteria when making pretrial custody decisions. In general, only children charged with high misdemeanor (first, second, or third degree) offenses coupled with a past record of criminal offenses or failures to appear for court hearings should be eligible for detention. *Id.* at 21.

Amicus sees no conflict between stricter detention criteria and the philosophy of the juvenile court. Since most detention

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5. In a study by Mr. Khim of two rural counties and two urban counties (including one rural New Jersey county) using the national standards, there was a significant reduction in the number of juveniles detained. He also studied the appearance rate of released juveniles and found no significant difference in the failure to appear rate. R. Khim, *Prohibiting Secure Juvenile Detention: Assessing the Effectiveness of National Standards Criteria,* 31 Juv. & Fam. Ct. J.3,12,13 (1980).

laws including New Jersey's have a stated preference for release, stricter standards comply with that preference. The opinion of the Circuit Court does not prohibit preventive detention but requires such practices to meet due process standards. Juveniles who are inappropriately detained are neither receiving preferential treatment nor fair treatment. Fair treatment can only strengthen the juvenile justice system. Any system that allows juveniles to be needlessly detained in jail-like facilities deserves to end.

Justice Fortas' often quoted comment in *Kent v. United States*, 383 U.S. 541 (1966), is especially relevant to the case at bar. He wrote:

> There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds; that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children. *Id.* at 556.

If the decision below is reversed, then large numbers of children will continue to be detained on grounds that no adult would be detained for and instead of being held in facilities that are appropriate for children, they will be placed in detention centers that are polite euphamisms for jails.

CONCLUSION

For the foregoing reasons, amicus submits that the decision of the Second Circuit should be affirmed.

Respectfully submitted,

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